

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4392 of 1983

Date of decision: 16-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYASHANKER K TRAWADI

Versus

COMMISSIONER OF SLAES TAX

Appearance:

MR JR NANAVATI for Petitioner

Mr. Nigam Shukla for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner was appointed as clerk on 8-7-1946. Learned counsel for the petitioner does not dispute that after his appointment on the post of Junior Clerk the petitioner has been given promotion from time to time to the higher post of Inspector of Sales Tax. Prior to the year 1967 promotion to the post of Inspector of Sales Tax was provided from the post of Clerk. In the year 1967 post of senior clerk was interpolated. By Resolution dated 12th December, 1978 the Government directed that as a special case the pay of the senior persons promoted directly to the post of Sales Tax Inspector from the cadre of clerk should be stepped up to the pay of his junior who had been promoted first as a senior clerk and then given selection grade, subject to the fulfillment of the conditions mentioned in the said Government Resolution. The benefit of the said Resolution could not be given to the petitioner for the reason that it was not given retrospective effect.

2. The petitioner has admittedly retired from Government service in the year 1972. Otherwise also there is no justification in the claim of the petitioner. Mr. Nigam Shukla, learned counsel for the respondents contended that the petitioner was given promotion on the post of Inspector earlier to 20th September, 1972, but he was reverted as he had not passed the departmental examination which was one of the eligibility criteria for promotion. He had passed the examination in the year 1971 and as such he was given promotion on 20th September, 1972. In view of this fact, learned counsel for the respondents contended, the petitioner cannot be given the benefit of stepping up of his pay.

3. I find sufficient justification in this contention raised by the learned counsel for the respondents. The petitioner could not retain his promotion as he had not passed the departmental examination and consequently he was reverted. So the case is not that some junior has been given promotion or senior has been denied, or senior has been given promotion and junior has been retained and the petitioner has been reverted. The petitioner was given promotion in due course, but because of his own fault of not passing the departmental examination he has been reverted. Last but not the least, the petitioner had not raised any grievance at any point of time till his retirement from service in the year 1972. This writ petition has been filed eleven years after his retirement. The counsel for the petitioner contended that the Government Resolution was passed in the year 1978. Even if we go by the Government Resolution the petition has been filed five

years after the issuance of the Government Resolution. Normally after admission writ petitions are not dismissed on the ground of delay but in a case where grievances are made after retirement and prima facie there is no justification for the claim made, delay may be taken to be fatal to the maintainability of the writ petition.

4. In the result this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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